IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 24TH APRIL 2007 / 4TH VAISAKHA 1929

WP(C).No. 25682 of 2006(G)

PETITIONER:

THE VICAR,
ST. SEBASTIANS CHURCH, SEBIPURAM, MANJAPRA-683 581

BY ADV. SRI.V.M.KURIAN
SRI.MATHEW B. KURIAN
SRI.K.T.THOMAS

RESPONDENTS:
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1. **P.V. SUBRAMANIAN,**
   POOTHAKUDI, NADUVATTOM KARA, MANJAPRA P.O.

2. **SUDARSANAN,**
   AMPADATH MALIKA, NADUVATTOM KARA, MANJAPRA P.O.

3. **THE DISTRICT COLLECTOR,**
   ERNAKULAM, CIVIL STATION, KAKKANAD.

4. **THE MANJAPRA GRAMA PANCHAYAT,**
   MANJAPRA P.O., REPRESENTED BY ITS SECRETARY.

BY ADV. SRI.WILSON URMESE for R4
SRI.BABU PAUL for R1 & R2
BY GOVERNMENT PLEADER for R3

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24/04/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1:	**COPY OF THE DETAILED DRAWING OF THE CEMETERY.**
EXT.P2:	**COPY OF THE LOCATION SKETCH OF THE CEMETERY.**
EXT.P3:	**COPY OF THE REPORT DTD. 29/06/2005 SENT BY THE DISTRICT MEDICAL OFFICER.**
EXT.P4:	**COPY OF THE NOTICE APPROVED AND PUBLISHED BY THE DISTRICT COLLECTOR DTD. 01/08/2005 UNDER RULE 6(7) OF THE KERALA PANCHAYAT RAJ (BURIAL AND BURNING GROUND) RULE, 1998 INVITING OBJECTIONS.**
EXT.P5:	**COPY OF THE DEEPIKA DAILY DTD. 10/08/2005 SHOWING THE PUBLICATION OF THE NOTICE AND APPLICATION.**
EXT.P6:	**COPY OF THE PROCEEDINGS DTD. 19/11/2005 ISSUED BY THE DISTRICT COLLECTOR.**
EXT.P7:	**COPY OF THE REPRESENTATION DTD. 29/11/2005.**
EXT.P8:	**COPY OF THE COMMISSION REPORT.**
EXT.P9:	**COPY OF THE OBJECTION DTD. 14/12/2005 FILED BY THE CHURCH AGAINST EXT.P8 COMMISSION REPORT.**
EXT.P10:	**COPY OF THE JUDGMENT DTD. 19/12/2005 IN WP(C) NO. 33674/2005.**
EXT.P11:	**COPY OF THE PROCEEDINGS OF THE 3RD RESPONDENT DTD. 01/09/2006.**
EXT.P12:	**COPY OF THE PETITIONER'S EXPLANATION DTD.11/01/2007 SUBMITTED BEFORE THE 1ST RESPONDENT TOGETHER WITH THE LETTER DTD. 24/01/2005 SENT BY THE PANCHAYAT TO THE ASSISTANT EXECUTIVE ENGINEER, COMMAND AREA DEVELOPMENT AUTHORITY, TRICHUR.**

/TRUE COPY/

KSS

PIUS C. KURIAKOSE, J.

W.P.(C) No. 25682 OF 2006

Dated this the 24th day of April, 2007

JUDGMENT

The Vicar of St.Sebastian's Church, Manjapra is the petitioner. Respondents respectively are (1) Sri.P.V.Subramanian, (2) Sri.Sudarsanan, (3) the District Collector, Ernakulam and (4) the Manjapra Panchayat. The petitioner submits that the St.Sebastian's Church is a Parish Church under the Ernakulam-Angamaly Arch Diocese having more than 300 families. The church has no cemetery of its own and the parishioners have been using the cemetery of the Manjapra Forane church. Since the distance between the Forane Church and the petitioner church is more than 3 Kms and the distance from one end of the petitioner parish to the cemetery of the Forane church is more than 5 Kms, the parishioners are put to considerable difficulties. The petitioner church is situated in a village whose parishioners are mostly poor and cannot afford to hire ambulances for carrying dead body to the distant cemetery. The petitioner states that under the above circumstances an application was submitted before the 3rd respondent-District Collector under Rule 6(1) read with Rule 6(3) of the Kerala Panchayat Raj (Burial and Burning Grounds) Rules 1998 for licence to open a new cemetery. Petitioner claims that the application was accompanied by all documents prescribed under Rule 6(4) and Ext.P1 is copy of the detailed drawing of the cemetery produced along with the application. Ext.P2 is copy of the

location sketch of the cemetery. Ext.P3 dt.29.6.05 is copy of the report sent by the DMO. Ext.P4 is copy of the notice approved and published by the District Collector on 01.08.05 under Rule 6(7) inviting objections. Ext.P5 is copy of the publication of the notice and the application made in Deepika daily dt.10.08.05. It is submitted that publication was duly made in the Village office and the Panchayat Office and that there was no objection from anybody including respondents 1 & 2 pursuant to the publication. The District Collector therefore considered the reports received from the Panchayat, the DMO, the Tahsildar, the Village Officer and also the resolution of the Panchayat favouring issuing of licence to the church issued proceedings dt.19.11.05 permitting construction of the cemetery. Ext.P6 dt.19.11.05 is copy of the above proceedings of the District Collector. Petitioner submits that pursuant to Ext.P6 major part of construction of concrete vault type cemetery consisting of 28 number of vaults was done. The entire floor of the cemetery is thickly concreted and the outer walls are also concreted. It is claimed that construction has been made pucca and every care has been taken for eliminating scope for any percolation, contamination or nuisance. All conditions laid down in Ext.P6 proceedings have been strictly complied with in the matter of construction. But while so respondents 1 & 2 approached this Court filing

WP(C) No.33674 of 2005. The prayers in that Writ Petition were that the District Collector's order dt.19.11.05 be recalled and the objections of the petitioners in that Writ Petition as per Ext.P1 be heard and till then the 4th respondent Church be not allowed to continue the construction of the cemetery. Ext.P1 referred to in that Writ Petition was a representation dt.29.11.05 which was submitted to the District Collector after the District Collector issued Ext.P6 proceedings. Ext.P7 is copy of the said representation. This Court deputed an advocate commissioner to ascertain the facts. The Commissioner inspected the site and measured distance between the proposed cemetery and residential houses, drinking water sources, educational institutions, places of worship etc. Ext.P8 is copy of the Commissioner's report and mahazor. Ext.P8 discloses that the petitioner church has constructed concrete vault type cemetery and that there is no residential houses or drinking water source within 25 meters of the proposed cemetery and that the educational institutions or places of worship are far away from the proposed cemetery. Petitioner claims that Ext.P1 reveals that the statements in Ext.P7 representation were baseless and that the objection against granting of licence was unsustainable. This Court disposed of the Writ Petition by Ext.P10 judgment dt.19.10.05 directing the 3rd respondent-District Collector to

consider and dispose of Ext.P1(Ext.P7 in this case) in the light of the Writ Petition, counter affidavits, the Commission report, objections to that report and observations in the judgment. A time limit of 45 days was fixed for the District Collector to pass an order. Ext.P9 is copy of the objection filed by the church. Petitioner submits that as directed in Ext.P10, copies of all relevant materials were placed before the District Collector. The District Collector has after about 9 months passed an order rejecting the application on the ground that there is factual in accuracy in the advertisement published under Rule 6(7). Ext.P11 is copy of the District Collector's order dt.1.9.06. Impugning Ext.P11 on various grounds and submitting that the provision for appeal under Rule 6(10) is neither adequate nor efficacious in the circumstances of the case, the petitioner prays for issuing a writ of certiorari quashing Ext.P11 and for a direction to the 3rd respondent to issue licence to the petitioner for the concrete vault type cemetery.

2. The 3rd respondent-District Collector has filed a counter affidavit. It is pointed out that the Writ Petition is not maintainable since under Rule 6(10) of the Kerala Panchayat Raj (Burial and Burning Grounds) Rules 1998 the petitioner has statutory remedy of appeal before Government which has not been availed by the petitioner. The counter affidavit

proceeds to say that two hearings were conducted by the District Collector pursuant to Ext.P10 judgment on 22.02.06 and on 20.07.06. Respondents 1 & 2 in the Writ Petition pointed out that there is factual inaccuracy in advertisement published under Rule 6(7) of the Kerala Panchayat Raj (Burial and Burning Grounds) Rules 1998. The application of the petitioner was for the construction of a vault type cemetery. But in the publication of the notice the petitioner invited objection only for construction of a cemetery and it was not mentioned that the proposed cemetery was a vault type one. The petitioner had been informed by letter No.M5-33101/05 dt.1.8.05 that the licensing authority will not be responsible for any mistake occurring in connection with the publication of the notice and the application and for objectionable elements, if any, which may lead to the rejection of the application. The petitioner's application for vault type cemetery was rejected due to the said factual inaccuracy. The Counter Affidavit states that the petitioner had to publish a copy of the application which he had submitted to the District Collector. Instead of that the petitioner published an application which is different from the one that had been submitted to the Collectorate. The application which the petitioner had submitted was for a vault typed cemetery. But in the publication what had been stated was that the application was only

for a cemetery, not vault type.

3. The party respondents 1 & 2 have filed a detailed counter affidavit through Sri.P.V.Subramanian, the 1st respondent. He also contends that the Writ Petition is not maintainable since the statutory alternative remedy under Rule 6(10) has not been exhausted by the petitioner. The claim that the petitioner church is having 300 families is denied and it is contented that the petitioner church which was constructed only during the year 2000 is situated hardly one KM away from the mother church Manjapra Forena Church and that the petitioner church caters to the needs of around 50 families only. It is contended that in the application for licence for establishment of burial ground the petitioner church had suppressed material facts. It was stated in the application that there are no residences between 50 meters of the proposed burial grounds. It was also stated that the non-residential building exists between 50 meters. In the application it has been stated that the extent of burial ground is only 60 squ. Mts. which are all suppression of material facts. The Advocate Commissioner has reported that 32 families live within a radius of 50 meters from the proposed burial ground. It is submitted that processing of the application is based on the information furnished by the applicant and that the applications which

state that there are no families between 50 mts., are processed without further scrutiny. If true facts had been disclosed by the petitioner, the process of application will have been in a different angle. When respondents 1 & 2 appeared before the District Collector pursuant to Ext.P10 judgment on perusal of the application submitted by the petitioner it was seen that in the application the word (vault type) is added. In Ext.P5 application which is published in the newspaper, vault type is conspicuously absent. This aspect was pointed out at the time of hearing. Since it was the original application submitted by the applicant which was to be published, it became clear that after publication of the notice in the newspaper and when objections were raised by filing the Writ Petition, 'vault type' is incorporated in the original application form. When the Commissioner reported that there are 32 families residing within 50 meters, the petitioner cannot construct a burial ground but can construct only a vault. Therefore manipulation was made on the original application after notice was published in the newspaper and presumably after the earlier writ petition is filed. The correction obviously was done to the knowledge and consent of the petitioner who is the only beneficiary of such a correction. The office of the District Collector also connived at this illegality. When these respondents came to know that the petitioner is

constructing a cemetery after obtaining collusive permission from the District Collector, these respondents brought the facts to the notice of this Court and this Court directed the Collector to hear the affected persons and to take fresh decision. It was accordingly that the District Collector heard these respondents and the petitioner and verified the records and became convinced about suppression of the material facts and that there is manipulation in the original application, the District Collector rejected the application. It is clear from Ext.P6 itself that what was being granted was only a conditional licence which clearly states that the licensing authority is not responsible for any mistake occasioned in connection with the publication of the notice and application and for the objectionable elements if any now exist, which may lead to the rejection of their application. The counter affidavit proceeds to say that the respondents have also came to know that the proposed site for construction of cemetery is on Government land. A public interest litigation under WP(C) No.28186 of 2006 was filed and a Division Bench of this Court directed the Collector to take a decision within three months regarding finding of the Tahsildar that the canal is filled up. It will not be proper and appropriate to proceed further till a decision is taken in the matter. The counter affidavit also contends that what is actually constructed by the

petitioner is not a concrete vault but is a tomb. Concrete vault cemetery means that the cellar of the cemetery will be above ground level. The body will be decomposed in this concrete cellar. When the same cellar is requred for burial of another body, the mortal remains will be removed to the concrete pit attached to the cellar. Perusal of Ext.P2 will reveal that what is being constructed by the petitioner is not a concrete vault. It is further contended that there are two prominent temples in the next neighbourhood of the proposed cemetery. The temple is open to the devotees for prayers on all days when the Sabarimala Ayyappa Temple is opened to the devotees, because the idol in Sabarimala and this temple is one and the same. The Puja is being conducted on every first Saturday of the Malayalam month by the former Sabarimala Mel Shanthi A.R. Raman Nambuthiripad. In addition to that there is a permanent pujari, Chengazhasseri Cheria Narayanan Namboothiri. For the last 4 years, this temple is being used as Saranalaya Kendram during Sabarimala season co-sponsored by Mathrubhumi daily. The 'Sarana Vazhi' a supplement released by Mathrubhoomi to Ayyappa devotees also mentioned the above temple among major temples to be visited by Ayyappa devotees who visit Sabarimala. The history of the temple was broad casted on All India Radio in 2003. It is submitted that as per the Hindu temple rituals

whenever a body or corpse is seen within the premises unless and until the body is removed the Puja cannot be continued. Property belonging to the temple is adjoining to the church property. There is a strong resentment among the Hindus in the area against the construction of the cemetery in the area. If the petitioner proceed with the construction of cemetery, there will be serious threat to the law and order in the area and even a communal riot may erupt over the issue. Even today there is tense situation in the area which can be ascertained from respondents 3 & 4. The Collector will have to consider whether there is any genuine necessity for construction of a cemetery for the petitioner-church as the mother church is hardly 1KM away from the petitioner church and the petitioner church came into existence only six years back. Refuting the claim of the petitioner that the construction made is pucca, the counter affidavit contends that from the Commissioner's report itself it is clear that it is hollow bricks which are used for the construction and that such bricks will not resist leakage. Accordingly, it is contended that the cemetery will necessarily during course of time, will develop leakage to the earth which will reach the wells from where the residents taking water for drinking purposes.

4. A reply affidavit had been filed. The reply affidavit reiterates the

contention that the District Collector passed Ext.P11 without complying with the directions in Ext.P10 by stating that there is inaccuracy in the publication of notice under Rule 6(7) of the Kerala Panchayat Raj (Burial and Burning Grounds) Rules 1998. Referring to the allegation that the church had filled up a canal and in a public interest litigation WP(C) No.2816 of 2006 there was a judgment directing an enquiry by the District Collector, it is contended that the church had no occasion to present real facts before this Court since the Writ Petition was disposed of without notice to the church. In fact there was a narrow canal through part of the church property which was diverted by the PWD authorities at the instance of the Manjapra Panchayat in the year 2005. Respondents 1 & 2 are not beneficiaries of the canal. Up to the filing of the Writ Petition by the petitioner, nobody thought of complaining about the deviation. No inconvenience or injury is caused to any of the beneficiaries on account of the diversion. No part of the canal is used for construction of the cemetery by the church. The District Collector conducted a hearing on 11.1.07, pursuant to the judgment in WP(C) No.2816 of 2006. Ext.P12 is copy of the explanation dt.11.01.07 submitted by the petitioner before the 1st respondent together with copy of the letter dt.24.1.05 sent by the Panchayat to the Assistant Executive Engineer, Command Area

Development Authority(CADA), Trichur. Respondents 2 and 3 had no complaint against the alleged filling or diversion of the canal as will be seen from Ext.P7 representation. At any rate, the alleged diversion of the canal is not a relevant issue in this Writ Petition, much less one to be raised by respondents 1 & 2 in the Writ Petition filed by the petitioner.

5. Mr.V.M.Kurian, learned counsel for the petitioner-Church and Mr.Babu Paul, learned counsel for the party respondents addressed me extensively. I heard the submissions of Mr.Wilson Urmese, learned counsel for the 4th respondent-Panchayat and also those of Mr.K.J.Mohammed Anzar, learned Government Pleader on behalf of the third respondent-District Collector.

6. Making submissions on the basis of the pleadings, Mr.Kurian referred to Ext.P10 judgment, Ext.P11 impugned order and also to the District Collector's order's order No.L8.50169/06/K.Dis. dated 19.1.2007 issued in implementation of the directions of this court in W.P.C.No.28186/06. In fact a copy of that order was made available before me by Mr.V.M.Kurian. Mr.Kurian also referred to Ext.P1 complaint in W.P.C.No.33674/05 (Ext.P7 in this case) and submitted that inaccuracy in the notice published by the District Collector was never raised as an issue by the party respondents at all. The District Collector has not

complied with the mandate of Ext.P10 judgment which directed him to take an early decision on the merits of the matter taking into account the Commissioner's report and all other relevant materials affording hearing opportunity to the party respondents and to the petitioner-Church. The inaccuracy of the notice was never an issue before this court also.

7. Mr.Babu Paul, learned counsel for the party respondents would resist the submissions of Mr.Kurian on the basis of the counter affidavit and would refer to Exts.P7, P6, P10 and P11. The learned counsel drew my attention to sub-rule (8) of Rule 6 of the Kerala Panchayat Raj (Burial And Burning Grounds) Rules, 1998 and also to Webster's New World College Dictionary to contend that the construction which has been now put up by the petitioner-Church are not in strict sense vaults. There has been suppression of material facts by the petitioner-Church while making the application. It was the application submitted by the petitioner-Church which was published by the District Collector and the District Collector had made it clear by directing the applicant-Church to publish notice under sub-rule (7) of Rule 6 that the licensing authority will not be responsible for any mistake in connection with the publication of notice. Ext.P6 is a true copy of the very application itself and counsel would submit that insertions have been subsequently made after this court

passed Ext.P11 judgment on the original application so as to indicate that the proposed cemetery is vault type cemetery and this could be done with the connivance of the Collectorate staff and this court may not grant discretionary relief to a party who approaches the court with unclean hands.

8. Mr.Kurian in reply would submit that the party respondents do not having any local standi to support Ext.P11 since it cannot be said that they are persons aggrieved by Ext.P6 order. Relying on Ext.P8 Commissioner's report, learned counsel submitted that neither of them are having their places or residences within the limits of the 4th respondent-Panchayat. They did not raise any objections while objections were called for by Ext.P4 notice. It is only after Ext.P6 order was passed that they submitted their complaint, Ext.P7. Counsel relied on the judgment of the Supreme Court in **J.M.Desai v. Roshan Kumar** (AIR 1976 S.C. 578) to drive home that the party respondent at any rate are not persons who will be aggrieved by any order by the District Collector to issue licence to the petitioner-Church for commencing the cemetery.

9. While the learned counsel for the 4th respondent-Panchayat supported the submissions of Mr.Kurian, the learned Government Pleader would justify the District Collector's order on the reason that Ext.P5 notice

was inaccurate in the sense that is not specified that the cemetery to be constructed by the petitioner-Church is vault type cemetery. The Government Pleader however would submit that the party respondents' objection that the cemetery is being constructed by reclaiming a cada canal is not sustainable and agreed that the District Collector has already passed Order No.L8.50169/06/K.Dis. dated 19.1.2007 holding that there was absolutely no substance in the compliant which was the subject matter of this court's judgment in W.P.C.No.28186/06.

10. I have considered the rival submissions in the light of the rival pleadings and the documents produced by the parties. Ext.P5 is the notice annexing the application in form No.1 submitted by the petitioner-Church which was published by the District Collector under Sub-rule (7) of Rule 6 of the Kerala Panchayat Raj (Burial and Burning Grounds) Rules, 1998. Sub-rule (3) of Rule 6 provides that the application shall be submitted by the applicant to the Secretary of the Panchayat in Form No.1 who is to forward the application to the District Collector with the recommendations of the Panchayat through the District Medical Officer. It is not disputed before me that the application for licence submitted by the petitioner-Church conforms to Form No.1 which is one prescribed under Sub-rule (3) of Rule 6. Significantly the relevant clause 9 of Form No.1

the applicant is expected to specify only whether licence is sought for burial or for burning of corpse, and in Ext.P5 application it is seen specified that the proposal is to have burial of corpse. There is no provision or clause in the statutory form to indicate as to whether proposed cemetery is a conventional type cemetery or vault type. The form seems to be same whether it is a conventional type cemetery or vault type cemetery which is applied for. There is no separate form to be used when vault type cemeteries are proposed. Conventional types of cemeteries will not be permitted if there are residential houses within a distance of 50 metres from the boundary of cemetery wall. Vault type cemeteries will be permitted if there are no residential houses within 25 metres from the boundary of the cemetery. Mr.Babu Paul is certainly right in submitting that the claim of the Church that there was no residential houses within 50 metres from the boundary of the proposed cemetery was wrong. But at the same time, I am not impressed by his submission that prejudice has been caused to his clients and the people of the locality due to the inaccuracy of the application in Form No.1 published along with Ext.P4 notice. In spite of Ext.P5, nobody from the Panchayat area appeared before the District Collector to raise any objections. It is not contended before me that the publicity which was given by the District

Collector was not in terms of Sub-rule (7) of Rule 6; instead the contention is that the publicity was given by the District Collector to the application in Form No.1 submitted by the petitioner which did not specify that the cemetery proposed is a vault type cemetery but rather indicated that the cemetery proposed is a regular cemetery. The procedure to be adopted by the District Collector, the licensing authority when he receives an application for licence in Form No.1 whether it be a conventional type cemetery or a vault type cemetery is the same. Of course, if it is a conventional cemetery, residents within 50 metres are entitled to raise their objections. In the instant case notwithstanding the inaccurate Ext.P5 nobody including the party respondents raised any objections. It is common ground that scope for objections will be larger if the proposal is for conventional cemetery. I am of the view that no prejudice whatsoever has been occasioned to anybody who is entitled to raise objections due to the inaccuracy in the publication which was effected in this case. Ext.P7 mass complaint is submitted obviously after the District Collector issued Ext.P6 order. Ext.P7 also the inaccuracy of Ext.P5 notice is not raised as a ground. I am not impressed by the submission of Mr.Babu Paul in all probability the words 'vault type' were inserted by the Church after this court passed Ext.P11 judgment by colluding with the Collectorate staff.

The District Collector in Ext.P6 dated 19.11.2005 itself has indicated that the application which was forwarded to him through proper channel as laid down in sub-rule (5) of Rule 6 of the Kerala Panchayat Raj (Burial And Burning Grounds) Rules, was for “opening and maintenance of a concrete vault type cemetery”. The mass complaint itself as already indicated was submitted only on 29.11.2005. In W.P.C.No.33674/05 which was filed by the party respondent arraying the present writ petitioner as the 4th respondent the assertion of the 4th respondent was that the 4th respondent's application was for a burial vault. Before this court by referring to Ext.P5 application in Form No.1 the party respondents attempted to point out that the statutory authorities have all proceeded on the assumption that in essence the petitioner's application was for a burial ground and not for a vault. It is clear from this court's judgment itself that the controversy as to the nature of the cemetery existed at least when W.P.C.No.33674/05 was considered. This court considering the contentions obviously thought that the matter must be considered on its merits. This was why an Advocate Commissioner was deputed who is submitted Ext.P8 report and Ext.P9(a) mahazar. This court certainly found that the application submitted by the petitioner has to be enquired into as one for licence in respect of a proposed burial vault. In

fact in paragraph 3 of Ext.P10 judgment this court has found referring to the Commissioner's report that the said report disclose that there is no drinking water outlet or dwelling house within a radius of 25 metres from the proposed site of the vault. Ultimately what this court has directed is that the District Collector, the licensing authority shall take a fresh decision on the matter after hearing the Church and the objectors, the writ petitioners. The parties were permitted to place on record the Advocate Commissioner's report and other materials before the District Collector. Considering the submission made on behalf of the petitioner-Church that construction of the vault is half way through, this court directed that the proceedings shall be completed as expeditiously as possible and at any rate within 45 days. The District Collector was specifically directed to consider the Commissioner's report and the objections submitted by the parties to the Commissioner's report as well as copy of the counter affidavit submitted by the Church and take a decision. In other words, Ext.P10 judgment clearly indicates that this court expected the District Collector to take a decision on the merits of the matter and not to non-suit the application on the ground of inaccuracy.

11. It should be noticed that the learned Government Pleader though he justified Ext.P11 order was not prepared to endorse the

submission of Mr.Babu Paul that corrections were got made in the original of Ext.P5 application by the petitioner-Church colluding with the authorities. In Order No.L8.50169/06/K.Dis. dated 19.1.2007 also the District Collector has reported that it is a cemetery under vault system which is being constructed by the Church. The above order in fact finds that the complaint which was the subject matter of the public interest litigation W.P.C.No.28186/06 which is also relied on by the party respondents in this court was without substance. I am of the view that the District Collector was not justified in rejecting the petitioner's application for licence on the technical reason that Ext.P5 application was inaccurate. The District Collector should have kept in mind the terms of Ext.P10 judgment and taken a decision on merits considering the materials which were directed to be considered by this court in Ext.P10 including further report from the District Medical Officer and the Panchayat if necessary. Ext.P11 is therefore quashed. The claim of the petitioner-Church is that the concrete vault type cemetery is being constructed in such a fashion that scope for any ercolation and contamination or nuisance is completely eliminated. The District Collector can examine whether this claim is well founded by having necessary inspections conducted through the District functionaries of the Pollution Control Board or the Executive Engineer of

the Buildings Division of the Public Words Department as he chooses. Fresh decision as directed above will be taken by the District Collector on merits after hearing the petitioner-Church and respondents 1 and 2 and after affording opportunity to them to produce whatever further materials on which they want to rely on before taking final decision. Final decision as directed above will be taken by the District Collector within two months of receiving copy of this judgment.

The Writ Petition will stand allowed to the above extent. No costs.

PIUS C. KURIAKOSE, JUDGE

btt/srd